

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

1STARR DALTON,

Plaintiff,

v.

Case No. 2:10-cv-00214

WEST VIRGINIA DIVISION OF CORRECTIONS,
DAVID BALLARD, Warden, Mount Olive
Correctional Complex, JIM RUBENSTEIN,
Commissioner, West Virginia Division of
Corrections, CPT. JASON COLLINS,
LT. MARGARET CLIFFORD, LT. JAMES McCLOUD,
SGT. BRIAN MATTOX, SGT. CURTIS DIXON,
CPS. CLINT RYAN, CPL. NATE KENDRICK,
MICHAEL ANGEL, GARRATTE ADAMS, and
BRIAN GREENWOOD,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

By Memorandum Opinion and Order entered May 13, 2010 (docket # 6), the undersigned denied Plaintiff's application to proceed without prepayment of fees or costs, pursuant to 28 U.S.C. § 1915(g).

The Prison Litigation Reform Act of 1995 ("PLRA") provides that a sanction shall be imposed on those prisoners who file meritless lawsuits repeatedly. The sanction is that such prisoners lose the right to proceed without prepayment of fees and costs.

In no event shall a prisoner bring a civil action under this section [relating to proceedings in forma pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an

action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g); see also, Ashley v. E. Dilworth, CO-1, 147 F.3d 715 (8th Cir. 1998) ("Section 1915(g) denies the installment payment method to those prisoners who have had three previous cases or appeals dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted ('three strikes').")

In the Memorandum Opinion and Order, to which Plaintiff failed to file an objection pursuant to Rule 72(b), *Fed. R. Civ. P.*, the undersigned found that, while incarcerated or detained, Plaintiff has previously filed at least three actions in a court of the United States which have been dismissed as frivolous, malicious or for failure to state a claim, and that Plaintiff's present Complaint fails to state any facts indicating that he is under imminent danger of serious physical injury.

Plaintiff was ordered to pay the \$350 filing fee, in full, by June 15, 2010, and warned that if the filing fee were not paid, the undersigned would recommend that the presiding District Judge dismiss this civil action. Plaintiff has failed to pay the filing fee. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge dismiss this case without prejudice for failure to pay the filing fee.

Plaintiff is notified that this "Proposed Findings and

Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable John T. Copenhaver, Jr., United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this "Proposed Findings and Recommendation" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendation" to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to Judge Copenhaver.

The Clerk is directed to file this "Proposed Findings and Recommendation," and to mail a copy of the same to Plaintiff.

June 23, 2010
Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge